REMARKS

In response to the Office Action of April 4, 2007, claims 1, 2, 8 and 93-112 were examined and rejected. Independent claims 1, 8, 93 and 106 have been amended. The amendment is fully supported in the specification (see, e.g., page 2, line 13 – page 4, line 27; page 5, lines 19-21; page 6, line 27 – page 7, line 12; page 7, line 22 – page 9, line 9).

Claim Rejections – 35 USC § 103

Claims 1, 2, 8 and 93-112 have been rejected as obvious over Buist in view of Fenster. Applicants strongly disagree with (a) the propriety of the combination and (b) that the combination would result in the claimed invention. Reconsideration is requested.

In response to the Office Action, the independent claims have been amended. The amended independent claims make clear that the shares being traded are unrestricted securities and that the trading occurs on an exchange. The Examiner had indicated a willingness to reconsider Applicant's argument over (Buist as modified by) Fenster if the claims were so amended. Support for the amendments may be found, for example, on page 1, line 29 – page 5, line 7; page 11, lines 16-24; and page 16, line 3 – page 17, line 25).

As previously explained, Buist merely teaches trading securities on an electronic exchange, which is admittedly prior art, and Applicant has never claimed otherwise. However, the Examiner correctly notes that Buist does not disclose paying a royalty on the transaction (or any other form of remuneration) to the entity that issued the security that is the subject of a transaction on the exchange. Thus, the Examiner turns to Fenster. However, does not compensate for such deficiency of Buist. Although Fenster deals onlyl with a situation in which the seller of an apartment in the Fenster project is obligated to pay to the project manager (Co-op association) a "flip tax," as the Examiner calls it, the Examiner reasons that extending this

concept of a flip tax into the realm of securities traded on exchanges should be considered obvious. Applicant disagrees with this reasoning.

The reasoning set forth in the Office Action, moreover, is a pure application of hindsight, as well as being based on false analogies and logic that breaks down on closer inspection. The Fenster teaching is narrow, and it is not even in the same art as the claimed invention, securities trading. Neither is it in an analogous art. It is simply inapposite art. See *In re Clay*.

Indeed, to generalize the Fenster teaching as the Examiner has done, going from real estate to securities, requires a leap of faith provided nowhere other than, perhaps, in Applicant's own disclosure. Yet Applicant does not even believe it is there.

One skilled in the art of securities exchanges and securities trading would not as a matter of course look to the co-op housing world for new methods of financing companies that issue securities. Indeed, since the intermediaries who make securities markets function, such as investment bankers, make money by floating new issues, including secondary issues of securities, they would hardly be motivated to develop a method and system which reduces the need for secondary offerings of securities and reduces borrowing needs by public companies. The conventional wisdom of those skilled in the art of securities and finance, therefore, motivates them in a direction *contrary* to that leading from Fenster to the claimed invention.

Even then, Fenster discloses only a very unique and highly restrictive form of housing (for people) that includes, in addition to apartment units, "shared cooking, dining, and childcare facilities. . ." (Fenster, at *1). There is no analogy in the securities world. The shares in the cooperative units of Fenster ["Fenster shares," hereinafter] are distinct from shares of securities issued and traded on any of the national or international securities exchanges. Fenster shares are a form of representation of ownership of a specific asset, such as an apartment, plus a right to access the communal facilities; they do not represent an interest in the issuer, as such. As evidence, there is no indication, for example, that the holder of a Fenster share will receive, upon selling his or her share, anything other than the value of that individual's housing unit (let's call it an apartment), irrespective of the overall value of the Fenster housing project. For example, if the owner of apartment A experiences a 10% increase in the value of apartment A, he/she will receive that profit on sale despite the fact that the Fenster housing project may have increased

20% overall or on average, or may have declined 20% overall or on average (i.e., perhaps apartment A is a better than average apartment or a worse than average apartment). Thus, Fenster shares are ***not*** fungible, contrary to the Office Action's statement.. Each is **unique**. Fenster shares entitling a buyer to live in Apartment X and Fenster shares entitling a buyer to live in Apartment Y *inherently convey different rights and are not interchangeable;* thus, they are not fungible. Try convincing the owner or a basement unit and the owner of a penthouse unit that their shares have equal value, and try convincing a buyer to pay the same thing for the basement unit and the penthouse unit (even if they are the same size and have the same amenities)! The Examiner is simply confused about the facts and the meaning of the word "fungible" if he concludes otherwise.

By contrast, the claims specifically require that the securities be fungible, as are all shares of the same class, for public companies, once any restrictions have expired. If the common stock of XYZ Corp. rises in value 20%, each and any holder of XYZ stock who held the stock during that time receives the *same* 20% increase on sale (less any costs of sale); the shares are fungible.

Furthermore, it appears that two Fenster apartments with the same floor plan will be assigned the same number of shares by the housing co-op. (Apparently, for voting purposes and assessment of expenses for the shared facilities.) Yet, the value of these residential units may vary due to the apartments' locations, conditions, improvements made by previous owners, or general preference of buyers. Thus, Fenster apartments are not susceptible to trading on electronic exchanges as fungible units (which is, as discussed above, what equity security shares are, of course). They require personal evaluation of an asset being purchased; not the evaluation of the issuing enterprise. Of course the amenities and features of the overall housing community affect the values of its constituent apartments, but that is wholly irrelevant. Knowing that the aggregate value of the Fenster development increased from $150M to $155M, for example, does not allow one to figure out how much Apartment 5G changed in market value.

To use another analogy, the claimed invention is about the sale of shares in General Motors, not about the sale of a couple of used Chevy Camaros, each of which will, of course, have to be appraised individually. One might have high mileage, the other might be a little-

driven cream puff. They have different values. The shares do not. They are fully interchangeable.

The Office has stated that the fact that Fenster shares are, as previously argued, linked to a specific asset and not to a share of the profits of the issuer is of no weight because it is not recited in the rejected claims, relying on *In re Van Geuns* for an instruction not to read limitations from the specification into the claims. However, the Examiner misconstrues the analysis and the claim language. Applicant does not seek to read into any claim a limitation not expressed. Rather, the Examiner simply has not given the claim language its proper scope and interpretation. A Fenster share simply is not "a security in an entity." Applicant's point is that a Fenster share does not have the characteristics required of a security in an entity. It does not entitle the owner, for example, to a share of the equity of the Fenster housing project. This point is redundantly amplified in the amendment set forth above, wherein it is stated that "said security comprises fungible shares representing an interest in the entity," as Fenster units are not fungible shares in the housing project.

In addition, Fenster shares may not be divided or freely traded (alienated). Specifically, co-operative housing communities such as Fenster require the purchaser to obtain approval from the community management prior to purchasing Fenster shares. Further, Fenster specifically describes multiple restrictions on alienation imposed by the co-housing community that would not be acceptable for nationally traded securities. Fenster, in fact, teaches *away* from the present invention by suggesting that a personal familiarity of the co-housing management with the purchaser is one of the main requirements for co-housing. The claims now expressly recite the previously inherent characteristic of share fungibility. That is, a buyer need not distinguish the features of one share in a security from the next share in the same security; that is an inherent characteristic of the public equities markets, without which they probably could not function, and it is manifestly a different type of circumstance from that in which every item that may be purchased is unique.

The currently pending claims, moreover, are directed to computer systems having "means for consummating a transaction between a first party and a second party, [wherein said parties are] distinct from the issuing entity." (See e.g., Claim 106). Such transaction relates, contrary to

Fenster, to a "security [which] comprises fungible shares representing an ownership interest in the entity." (See, Claims 1, 8, 93 and 106). Manifestly, the Examiner impermissibly equates non-fungible, restricted shares in a housing unit with shares of fungible, freely alienable securities traded on an open market (e.g., an exchange). Consequently, Fenster discusses only non-analogous prior art and should be discarded from consideration. *See, e.g., In re Clay.*

Moreover, the proposal to marry Buist and Fenster to arrive at the claimed invention is an improper fabrication with no legal justification. Not only does the combination not result in the invention as claimed, but also no suggestion or motivation to combine the references is found in the references themselves or in the knowledge of those ordinarily skilled in the art of securities trading or of the art of computer systems to support securities trading (so-called electronic exchanges). No such individual would have been motivated to look towards co-housing projects for ideas to modify Buist or any other securities trading system. The Office Action ignores the requirement to define and focus on the person of ordinary skill in the art. It does not follow the requirements of *Graham v. John Deere Co.*, which are binding on the USPTO.

Thus, not only is there no motivation to even support a *prima facie* case for obviousness, but also the combination suggested by hindsight would not be the claimed invention. The combination that would result, if effected, is a completely unworkable securities exchange, where each transaction would require approval by the issuer of the security (per Fenster's requirement of centralized approval) (and thus require personal familiarity of the issuer with the buyer) and personal familiarity of the buyer with the unique qualities of shares being purchased.

Claims 109-112 have been rejected over a combination of Buist and Fenster, further in view of Bowman-Amuah. These claims all depend from claim 6, however, and the allowability of claim 6 is established above. Thus, no more need be said regarding these claims.

The obviousness rejection therefore should be withdrawn.

Non-Elected Claims

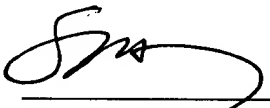
A number of claims were restricted out of the application, and withdrawn from consideration. Claim 1 and other allowable independent claims are believed to be generic as to all or some of the withdrawn claims. As Applicant's election was made with traverse, preserving Applicant's rights, those withdrawn claims should now be examined and allowed.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

By: 

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